

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**ANDREW LEWIS, et al.,**

**Plaintiffs,**

**v.**

**HEARTHSIDE FOOD ., et al.,**

**Defendants.**

**Case No. 2:13-cv-00823**

**JUDGE GREGORY L. FROST**

**Magistrate Judge Norah McKann King**

**ORDER**

This matter is before the Court for consideration of the January 13, 2014 Notice of Voluntary Dismissal filed by Plaintiffs, Andrew and Samantha Lewis (“Notice”). (ECF No. 32.) In that filing, Plaintiffs purport to voluntarily dismiss Defendant Toll Packaging Group, LLC a/k/a Donley Portfolio from this action pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). The Sixth Circuit, however, has suggested that Rule 21, not Rule 41, is the proper mechanism through which a party may dismiss its claims against a single defendant when the action remains pending against additional defendants. *See Letherer v. Alger Group, L.L.C.*, 328 F.3d 262, 265-66 (6th Cir. 2003), *recognized as overruled on other grounds in Blackburn v. Oaktree Capital Mgmt., LLC*, 511 F.3d 633, 636 (6th Cir. 2008). *See also AmSouth Bank v. Dale*, 386 F.3d 763, 778 (6th Cir. 2004).

In *Letherer*, the Sixth Circuit addressed its previous holding that Rule 41 is confined to the dismissal of only an entire *action* and cannot provide a mechanism through which select parties or claims can be dismissed. *Letherer*, 328 F.3d at 266. The *Letherer* court also recognized both that the court of appeals has been inconsistent in applying this rule and that at least five other circuits have interpreted Rule 41 less restrictively. *Id.* at 266 n.2. But although

appearing to question the narrow interpretation of Rule 41, the *Letherer* court did not resolve the issue to permit the action undertaken by Plaintiffs here.

This Court must adhere to precedent precluding the piecemeal dismissal of claims and parties under Rule 41. Accordingly, the Court construes the Notice as a motion under Rule 21 to drop Toll Packaging Group, LLC a/k/a Donley Portfolio, LLC as a party from this action. The Court then **GRANTS** the Rule 21 motion and **DISMISSES WITHOUT PREJUDICE** the claims against Toll Packaging Group, LLC a/k/a Donley Portfolio, LLC.

**IT IS SO ORDERED.**

/s/ Gregory L. Frost  
GREGORY L. FROST  
UNITED STATES DISTRICT JUDGE